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File No. O · Securities Co Control / 41

Legal **DEPARTMENT**

A **BRANCH**

Subject:— Opinions under the Bombay Securities Contract Control Act 1925

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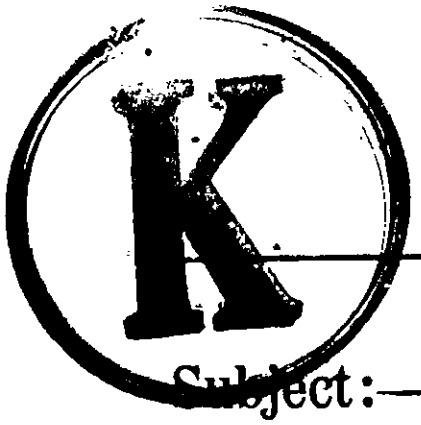

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Office of the R.L.A.

The question raised for consideration is as to the interpretation of rule 27(a) of the Rules of the Nativ Share and Stock Brokers' Association made under section 5 of the Bombay Securities Contracts Control Act, 1925. That sub-rule provides that the Board may by Resolution expel or suspend a member of the Association who, inter alia, is proved to be transacting business in fictitious names. It is suggested that this provision is capable of diverse interpretations, namely (1) that it penalises ~~on-ly~~ only the member who is himself found to deal on the stock exchange in fictitious names, or (2) that it penalises only the member who deals on behalf of a client who has assumed fictitious names for the purposes of the transations, or (3) that it penalises a member both when he himself trades in a fictitious name or deals on behalf of clients who hide their identity under fictitious names. And the Remembrancer of Legal Affairs is requested to give his opinion as to which of these interpretations is correct.

2. The expression "transact business" has not been defined in the Act or the Rules and must be construed in its ordinary sense. It connotes doing a series of acts occupying time, attention, and labour of men for the purpose of livelihood, profit or pleasure (Black's Law Dictionary, page 1747). A member of the Association is by profession a broker, and he earns his livelihood by sale and purchase of securities etc. for and on behalf of his clients. He may, and in practice often does, sell or purchase on his own account for profit or pleasure. In both cases he must be deemed to transact business. Consequently he can be said to "transact business in ~~fe~~es false names" within the meaning of Rule 27(a) , either when he himself transacts business as a broker under assumed names, or when he buys or sells on the exchange not in his capacity as broker but on his own account under fictitious names, whether he uses his own name as broker to put through the deal or uses

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some other broker e for the purpose. But it does not appear that he would fall within the mischief of the Rule e if when acting as broker he transacts business for a client who deals under a fictitious name. To hold otherwise would be to penalise an honest broker who may be in ignorance of the fact that a client is trading under a fictitious name. The point however is not quite free from doubt and it would be advisable to clear up the ambiguity by suitably amending rule 27(a).

Sd/- P.N.M.
5-6

Remembrancer of Legal Affairs.

Sd/-
5-6-41

U.R.to F.D., No. 5163, dated the 7th June 1941.

Office of the R.L.A.

The draft rule 300 sent by Mr. Shroff contained in his letter at page 18 ante provides that a defaulter shall lodge with the Clearing House immediately on declaration of default special Clearance Sheets relating to outstanding business and shall pay to the Clearing House the amount of Stamp Duty. The draft rule 121 in the F.D. office note at page 20 ante provides that when a member has been declared a defaulter the Defaulters' Committee shall take charge of all his books of accounts, documents, papers and vouchers to ascertain the state of his affairs andshall immediately submit special Clerance Sheets relating to outstanding business if the defaulter has failed to do so as required by rule 300. The draft rule 122(a) in the F.D. office note provides that the defaulter shall hand over all his books of accounts, documents, papers andvouchers to the Defaulters' Committee and shall file with the said Committee within fifteen days of the declaration of his default a written statement containing a complete list of his debtors andcreditors andthe sums owing by andto each, It appears that the object of making these rules is to recover stamp duty on transactions entered into by a defaulter. The relevant Article under which duty is leviable under the Indian Stamp Act, 1899, in respect of transactions entered into by a member of a stock exchange is Article 20A of Schedule I to that Act. That Article provides for the duty being levied on a clearance list relating to the transactions for the purchase or sale by a member of a recognised stock exchange on his own account or on account of any other person, of a Government security or a share, scrip, stock, bond, debenture, debenture stock or other marketable security of a like nature in or of an incorporate Company or other body corporate submitted by such member to the clearing house of a stock exchange recognised under the Bombay Securities

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Contracts Control Act, 1925. The explanation to the Article provides that for the purposes of this Article a clearance list shall mean a list of transactions required to be submitted to the clearing-hou clearing house by the member of a recognised stock exchange in accordance with the rules under the Bombay Securities Contracts Control Act, 1925. It is clear that a duty can be levied under this Article on a clearance list submitted only by a member of a recognised stock exchange. No duty can be levied under the Article on a clearance list submitted by any otherperson. Under rule 120(a) of the Rules of the Native Shares and Stock Brokers' Association a member who has been declared a defaulter shall at once ceaseto be a member of the Association. A defaulters' Committee cannot be considered as members of the Association within the meaning of Article 20A of the Indian Stamp Act, 1899. It is therefore doubtful whether a clearance list submitted by a defaulter or a Defaulters' Committee will be liable to stamp duty under this Article. The view taken by Mr. Shroff in paragraph 2 of his letter at page 18 ante appears to be correct. Although it is true that rules can be framed under the Bombay Securities Contracts Control Acr, 1925, providing for submission of clearance lists to the cl-earing house by defaulters, or by a Defaulters' Committee on the failure of the defaulter to submit such lists, the object in view,-viz. viz. to recover stamp duty on the transactions entered into b a defaulter cannot be achieved by making such a rules. To achieve the object in view the only remedy appears to be to amend suitably the Indian Stamp Act. In view of this position, it does not appear necessary to scrutinise the rules forwarded by F.D.

Sd/- P.N.M.
26-9
Remembrancer of Legal Affairs.

U. R. to F.D., No. 8526, dated the 29th September 1941.